

### **REMARKS**

Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1–54, 56–62, 64–75, and 77–80 are pending in the application, with claims 1, 6, 7, 19, 32, 36, 45, 47, 49, 51, 57, 62, 69, 73, and 78 being independent. Applicant cancels claims 55, 63, and 76 without prejudice, waiver, or disclaimer of the subject matter. Applicant amends claims 1, 7, 19, 45, 47, 49, 51, 57, 62, 73, and 78 to further clarify features of the claimed subject matter. The original specification and drawings support these claim amendments at least at page 3 lines 5–7; page 5, lines 19–20; page 6, lines 11–15; page 9, lines 2–4, 9–10; page 9 line 21–page 10 line 2; page 13 line 25–page 14 line 4; page 14, lines 11–12, 16–18; page 15, lines 8–17; page 17, lines 16–17; and page 33, line 1–page 34, line 2. Thus, these revisions introduce no new matter.

### **Claim Rejections 35 U.S.C. §102**

**Claims 1–80 are rejected under 35 U.S.C. 102(e) as being anticipated by Boston et al. (US 2008/0013919) (“Boston”).** Applicant respectfully traverses the rejection.

It is only after the USPTO makes a demonstration of unpatentability that the burden shifts to the applicant to rebut that showing. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)(“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant.”).

The MPEP states that “[a] claim is anticipated **only if each and every element as set forth in the claim is found**, either expressly or inherently described, in a single prior art

reference. . . . The identical invention must be shown in as complete detail as is contained in the . . . claim. . . . The elements must be arranged as required by the claim . . . .”. MPEP §2131 (emphasis added). Consequently, under the guidelines of the MPEP set forth above, if there is *any* substantial difference between the prior art cited by the Office and an applicant’s claim, the prior art does NOT establish a *prima facie* case of anticipation and, barring other rejections, such claim is allowable over the cited prior art.

### Claim 1

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 1 to clarify further features of the subject matter.

**Independent claim 1** recites a method comprising:

- obtaining audio/video data from a disc;
- presenting the audio/video data to a user;
- obtaining a set of executable software instructions from the disc;
- receiving an input from the user; and
- executing, in response to the input, one or more instructions of the set of executable software instructions to determine how to enhance presentation of the audio/video data to the user by using programmatic data associated with the disc, wherein the *programmatic data comprises:*
  - 3D representational data;*
  - 360 degree pictorial information;*
  - 2D information;*
  - markup data;*
  - the set of executable software instructions;*
  - data identifying an enhanced functionality corresponding to different devices;*
  - enhanced video/audio data;*
  - informational data;*
  - data identifying which content is to be displayed for different rating levels; and*
  - different display format data.*

Applicant respectfully submits that no such method is disclosed by Boston.

Boston is directed to “methods for automated personal video recording ... [that] include scheduling a show for a user having allocated storage space on a personal video recorder ("PVR") optionally including free space, in which the show has a storage space requirement that exceeds the user's free space, and the PVR is coupled for data communications to a storage space provider, and transmitting to the storage space provider an order to record the show through the storage space provider in storage space on a remote PVR that is coupled for data communications to the storage space provider” (paragraph 0019).

Based on the interview and the grounds of rejection for claim 1, Applicant understands the Office to interpret “programmable data” as computer software or “conventional software drivers” (Boston, paragraph 0122). Applicant respectfully disagrees. Applicant’s specification discusses “programmable data” throughout the specification including Table II which illustrates an example format for programmable data. “Programmable data” when read in light of Applicant’s specification does not simply equal computer software or drivers.

Applicant has searched and can find no disclosure in Boston of “*programmable data [that] comprises: 3D representational data; 360 degree pictorial information; 2D information; markup data; the set of executable software instructions; data identifying enhanced functionality corresponding to different devices; enhanced video/audio data; informational data; data identifying which content is to be displayed for different rating levels; **and** different display format data,*” as recited in Applicant’s amended claim 1.

Accordingly, each and every feature of amended claim 1 is not disclosed, and therefore Boston does not anticipate Applicant's amended claim 1. Applicant respectfully requests withdrawal of the §102 rejection.

### Claim 7

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 7 to clarify further features of the subject matter.

**Independent claim 7** recites a method comprising:

- obtaining, from a source, audio/video data for presentation to a user;
- obtaining, from the source, a set of executable instructions associated with the audio/video data;
- obtaining programmatic data associated with the audio/video data; and
- enhancing presentation of the audio/video data to the user based on the programmatic data processed by a playback device executing the set of executable instructions in conjunction with playing back the audio/video data, wherein the set of executable instructions are loaded by the playback device when the source is initially accessible to the playback device.*

Applicant respectfully submits that no such method is disclosed by Boston.

Boston discusses “recordable or distributable electronic or digital content including television broadcasts, movies, CD contents, DVD recordings, cable transmission, satellite transmissions, commercial video clips, audio, multi-media programming, and the like” (paragraph 0105). Boston also discusses “the initial bit rate for a 30 minutes show... a total space requirement... for the show's storage space requirement... [and a conclusion that] the storage space requirement is definitely an estimate” (paragraph 185).

However, Applicant has searched and failed to find, either in the cited paragraphs or elsewhere in Boston of “*enhancing presentation of the audio/video data to the user based on the programmatic data processed by a playback device executing the set of executable instructions in conjunction with playing back the audio/video data, wherein the set of executable instructions are loaded by the playback device when the source is initially accessible to the playback device,*” as recited in Applicant’s amended claim 7.

Accordingly, each and every feature of amended claim 7 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 7. Applicant respectfully requests withdrawal of the §102 rejection.

#### Claim 19

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 19 to clarify further features of the subject matter.

**Independent claim 19** recites a method comprising:

- receiving audio/video content for playback;
- receiving programmatic data associated with the audio/video content, wherein ***the programmatic data comprises information describing a difference between the audio/video content and an enhanced audio/video content;*** and
- executing a set of executable instructions to enhance the playback of the audio/video content, wherein the enhancement is based at least in part on ***adding the programmatic data to the audio/video content to generate the enhanced audio/video content.***

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection for Applicant’s claim 19 is paragraph 0185 of Boston (Office Action, page 5). For convenience, Applicant reproduces that paragraph from Boston.

Boston, paragraph 0185:

Assume that the initial bit rate for a 30 minutes show, a video download for example, is 150 kilobits/second, which would be fairly high quality video at MPEG-1. Thirty minutes is 1800 seconds, the duration of the show. 150,000 multiplied by 1800 is 270 megabits total space requirement, divided by 8 bits/byte is about 34 megabytes for the show's storage space requirement. This show is downloaded with quite a lot of compression, and the storage space requirement is definitely an estimate.

Applicant has searched and failed to find, either in the cited paragraph or elsewhere in Boston of “*receiving programmatic data associated with the audio/video content, wherein the programmatic data comprises information describing a difference between the audio/video content and an enhanced audio/video content; and executing a set of executable instructions to enhance the playback of the audio/video content, wherein the enhancement is based at least in part on adding the programmatic data to the audio/video content to generate the enhanced audio/video content,*” as recited in Applicant’s amended claim 19.

Accordingly, each and every feature of amended claim 19 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 19. Applicant respectfully requests withdrawal of the §102 rejection.

### Claim 32

**Independent claim 32** recites one or more computer readable media having stored thereon a plurality of instructions that, when executed by one or more processors, causes the one or more processors to:

access audio/video content obtained from a DVD;  
identify a current portion of the audio/video content being  
played back;

*identify programmatic data that corresponds to both the audio/video content and the current portion being played back;*  
and

enhance presentation of the audio/video content based at least in part on the identified programmatic data.

Applicant respectfully submits that no such computer readable media is disclosed by Boston.

The grounds of rejection supplied by the Office for claim 32 refer to the rejection of Applicant's claim 7 without specifically addressing the recitations of claim 32 (Office Action, page 6). Applicant's claim 7 at the time of the Office Action did not recite "*identify programmatic data that corresponds to both the audio/video content and the current portion being played back,*" as recited in Applicant's claim 32.

Applicant's specification discusses that, "[b]ased on the current location of AV content stream 222 being played back, the **corresponding** programmatic data 226 can be readily identified and processed by programmatic data control module 224" (page 10, lines 4–6; emphasis added). Applicant's specification further discusses that "[t]he programmatic data may be accessed on-the-fly (e.g., the current programmatic data is determined based on the **current playback location** of the AV stream 242), or portions (or all) of the programmatic data corresponding to AV stream 242 may be downloaded and made available locally to programmatic data control module 244" (page 10, lines 15–19; emphasis added).

Applicant respectfully submits that the current rejection of independent claim 32 fails to establish a *prima facie* case of anticipation because the Office did not address each and every element of the claim, and thus, failed to make a demonstration of unpatentability. Applicant respectfully requests withdrawal of the §102 rejection.

### Claim 36

**Independent claim 36** recites a computer readable media having stored thereon a data structure, comprising:

- a first portion containing audio data and video data;
- a second portion containing programmatic data;
- a third portion containing a plurality of instructions, wherein *when executed the plurality of instructions is to determine, based on which of the audio and video data are being presented, which of the programmatic data to process.*

Applicant respectfully submits that no computer readable media is disclosed by Boston.

The grounds of rejection supplied by the Office for claim 36 refer to the rejection of Applicant's claim 1 without specifically addressing the recitations of claim 36 (Office Action, page 6). Applicant's claim 1 at the time of the Office Action did not recite "*when executed the plurality of instructions is to determine, based on which of the audio and video data are being presented, which of the programmatic data to process,*" as recited in Applicant's claim 36.

Applicant's specification discusses that "[t]he programmatic data may be accessed on-the-fly (e.g., the current programmatic data is **determined** based on the current playback location of the AV stream 242), or portions (or all) of the programmatic data corresponding to AV stream 242 may be downloaded and made available locally to programmatic data control module 244" (page 10, lines 15–19; emphasis added).

Applicant respectfully submits that the current rejection of independent claim 36 fails to establish a *prima facie* case of anticipation because the Office did not address each and every element of the claim, and thus, failed to make a demonstration of unpatentability. Applicant respectfully requests withdrawal of the §102 rejection.



#### Claim 45

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 45 to clarify further features of the subject matter.

**Independent claim 45** recites a method performed by a playback device, the method comprising:

obtaining audio/video content to be presented to a user;  
obtaining programmatic data associated with the audio/video content; and

*responsive to an input from the user, executing a set of executable instructions in conjunction with playing back the audio/video data, wherein the executable instructions are loaded by the playback device when the audio/video content is initially accessible to the playback device, wherein the set of executable instructions use the programmatic data to improve a quality of the video of the audio/video content and the **programmatic data** comprises:*

*3D representational data;  
360 degree pictorial information;  
2D information;  
markup data;  
the set of executable software instructions;  
data identifying an enhanced functionality corresponding to different devices;  
enhanced video/audio data;  
informational data;  
data identifying which content is to be displayed for different rating levels; and  
different display format data.*

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection provided by the Office for Applicant's claim 45 is paragraph 0185 of Boston. This paragraph from Boston is reproduced above in the discussion of Applicant's claim 19.

For at least the same reasons as discussed above with respect to independent claim 1, Applicant respectfully asserts that Boston does not disclose “*programmatic data [that] comprises: 3D representational data; 360 degree pictorial information; 2D information; markup data; the set of executable software instructions; data identifying an enhanced functionality corresponding to different devices; enhanced video/audio data; informational data; data identifying which content is to be displayed for different rating levels; and different display format data,*” as recited in Applicant’s amended claim 45.

Furthermore, Applicant has searched and failed to find, either in the cited paragraph or elsewhere in Boston of “*responsive to an input from the user, executing a set of executable instructions in conjunction with playing back the audio/video data, wherein **the set of executable instructions are loaded by the playback device when the audio/video content is initially accessible to the playback device,***” as recited in Applicant’s amended claim 45.

Accordingly, each and every feature of amended claim 45 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 45. Applicant respectfully requests withdrawal of the §102 rejection.

#### Claim 47

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 47 to clarify further features of the subject matter.

**Independent claim 47** recites a method comprising:

obtaining audio/video content to be presented to a user;  
obtaining programmatic data associated with the audio/video  
content; and

executing a set of executable instructions that use the programmatic data to create an HDTV (High Definition TV) version of a video of the audio/video content, wherein the ***programmatic data comprises additional information describing regions of the HDTV version absent from the audio/video content due to an aspect ratio and an increased picture quality for the audio/video content.***

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection for claim 47 cites to Boston, paragraph 0172 to supply “an estimated initial raw compression level 422 in the source stream of 80:1 estimated on the basis of encoding according to MPEG-2, colorspace size 4:4:4 or ‘48,’ frame rate 428 of 30 frames/second, resolution of 1930x1080 pixels (an HDTV standard), with ‘High’ audio quality 432.” This paragraph of Boston discusses an “HDTV standard” and “compression,” but does not disclose “*creating an HDTV (High Definition TV) version of the video,*” as recited in Applicant’s claim 47.

Furthermore, Applicant has searched and failed to find, either in the cited paragraph or elsewhere in Boston of “*programmatic data [that] comprises additional information describing regions of the HDTV version absent from the audio/video content due to an aspect ratio and an increased picture quality for the audio/video content,*” as recited in Applicant’s amended claim 47. This use of programmatic data is described in Applicant’s specification at least on page 14, lines 6–19.

Accordingly, each and every feature of amended claim 47 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 47. Applicant respectfully requests withdrawal of the §102 rejection.

#### Claim 49

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 49 to clarify further features of the subject matter.

**Independent claim 49** recites a method comprising:

- obtaining audio/video content having a first aspect ratio to be presented to a user;
- obtaining programmatic data associated with the audio/video content; and
- executing a set of executable instructions that use the programmatic data to convert the video of the audio/video content from the first aspect ratio to a different second aspect ratio having at least one dimension smaller than the first aspect ratio by removing at least one of rows pixels or columns of pixels from the audio/video content.*

Applicant respectfully submits that no such method is disclosed by Boston.

Boston discusses “‘Main Profile, Main Level’ (MP@ML), which refers to 720x480 resolution video at 30 frames/sec, at bit-rates up to 15 Mb/sec for NTSC video.... [and] the HDTV resolution of 1920x1080 pixels at 30 frames per second, at bit-rates up to 80 megabits per second. This HDTV example is a ‘Main Profile, High Level’ (MP@HL) descriptor” (paragraph 0102). Boston also discusses “an example calculation of a compression ratio, presented in terms of a single image, which could be, for example, a static graphic image or a single video frame” (paragraph 0170).

However, Applicant has searched and failed to find, either in the cited paragraph or elsewhere in Boston of “*executing a set of executable instructions that use the programmatic data to convert the video of the audio/video content from the first aspect ratio to a different second aspect ratio having at least one dimension smaller than the first aspect ratio by*

*removing at least one of rows of pixels or columns of pixels from the audio/video content,”* as recited in Applicant’s amended claim 49.

Accordingly, each and every feature of amended claim 49 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 49. Applicant respectfully requests withdrawal of the §102 rejection.

#### Claim 51

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 51 to include all elements of dependent claim 55. The amendments to claim 51 are limited to incorporating the recitation of dependent claim 55.

**Independent claim 51** recites a method comprising:

- obtaining audio/video content to be presented to a user;
- obtaining programmatic data associated with the audio/video content; and
- executing a set of instructions that use the programmatic data to incorporate popup information into the video of the audio/video content, wherein the popup information includes ***a link that, when selected by the user, allows the user to purchase an item being displayed as part of the video.***

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection provided by the Office for independent claim 51 and former dependent claim 55 are paragraphs 0114, 0138, and 0112 of Boston. Boston discusses a “remote control unit 110 [which] includes a ‘Menu’ button for access to a central set of menus and data entry screens for configuring the PVR, configuring user profiles on the PVR, and scheduling shows” (paragraph 0112).

However, Applicant respectfully asserts that a remote control providing access to menus does not disclose purchasing of any kind. Accordingly, Boston does not disclose “*executing a set of instructions that use the programmatic data to incorporate popup information into the video of the audio/video content, wherein the popup information includes a **link** that, when selected by the user, allows the user to **purchase an item being displayed as part of the video**,*” as recited in Applicant’s amended claim 51.

Accordingly, as a *prima facie* case of anticipation has not been established for independent claim 51, now including the elements of dependent claim 55, Applicant respectfully requests withdrawal of the §102 rejection.

#### Claim 57

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 57 to clarify further features of the subject matter.

**Independent claim 57** recites a method performed by a content player, the method comprising:

- obtaining *audio/video content having a unique identifier*, the audio/video content to be presented to a user;
- obtaining programmatic data associated with the audio/video content; and
- executing *a set of executable instructions associated with the unique identifier* that use the programmatic data to display popup information when playback of the audio/video content is paused, wherein *an association between the unique identifier and the set of executable instructions is stored in a memory of the content player*.

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection for claim 57 cite to paragraph 0321 of Boston. Boston discusses “messages [that] are transmitted as ‘posts’, asynchronous, non-blocking messages.... [And] messages [that] are transmitted as ‘sends’, synchronous, blocking messages, for which PVR operations are paused for at least some period of time” (paragraph 0321).

However, Applicant has searched and failed to find, either in the cited paragraph or elsewhere in Boston of “*executing a set of executable instructions associated with the unique identifier that use the programmatic data to display popup information when playback of the audio/video content is paused, wherein an association between the unique identifier and the set of executable instructions is stored in a memory of the content player,*” as recited in Applicant’s amended claim 57.

Accordingly, each and every feature of amended claim 57 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 57. Applicant respectfully requests withdrawal of the §102 rejection.

### Claim 62

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 62 to include all elements of dependent claim 63. The amendments to claim 62 are limited to incorporating the recitation of dependent claim 63. Consequently, claim 62 presented herein has already been examined by the Office.

**Independent claim 62** recites a method comprising:

obtaining audio/video content to be presented to a user;  
obtaining programmatic data associated with the audio/video  
content; and

executing a set of instructions that use the programmatic data to allow the user to scan through important scenes of the audio/video content, wherein ***the programmatic data includes data identifying portions of the audio/video content that are important to the plot of the audio/video content, and wherein the user is allowed to scan through the portions of the audio/video content that are important to the plot.***

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection provided by the Office for independent claim 62 and former dependent claim 63 are paragraphs 0424 and 0112 of Boston. Paragraph 0424 of Boston discusses a “CommandSequence 4418 [that] is calculated for each command during training. More particularly, during training, a PVR according to this kind of exemplary embodiment, **scans** through all the command records 4416” (emphasis added). This passage includes the word “scans”; however, the scanning is of commands during training of a PVR. Paragraph 0112 of Boston is discussed above with respect to claim 51.

The passages cited by the Office do not disclose a plot or a scanning through portions of audio/video content. Applicant has searched and failed to find, a disclosure in Boston of “*executing a set of instructions that use the programmatic data to allow the user to scan through important scenes of the audio/video content, wherein the programmatic data includes data identifying portions of the audio/video content that are important to the plot of the audio/video content, and wherein the user is allowed to scan through the portions of the audio/video content that are important to the plot,*” as recited in Applicant’s claim 62. This use of programmatic data is described in Applicant’s specification on page 19, line 16–page 20, line 18.

Accordingly, as a *prima facie* case of anticipation has not been established for independent claim 62, currently including the elements of dependent claim 63, Applicant respectfully requests withdrawal of the §102 rejection.



Claim 69

**Independent claim 69** recites a method comprising:

obtaining audio/video content to be presented to a user;  
obtaining programmatic data associated with the audio/video content; and  
executing a set of instructions that use the programmatic data to present, to the user, *a summary of important scenes of the audio/video content up to a particular point in the audio/video content.*

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection for Applicant's claim 69 is paragraph 0021 of Boston.

Boston, paragraph 0021:

Exemplary embodiments of the invention typically include methods of personal video recording including receiving in a storage space provider from a personal video recorder ("PVR") an order to record a show on a remote PVR, the order including an identification of a show and a schedule for recording the show. Such embodiments include selecting a remote PVR, and recording the show, in dependence upon the show identification and the schedule for recording the show, in storage space on the selected remote PVR. In such embodiments, selecting a remote PVR includes selecting a remote PVR upon which the storage space provider is a user having allocated storage space with free space exceeding the show's storage space requirement. In typically embodiments, recording the show includes recording the show in storage space allocated to the storage space provider on the remote PVR.

The cited passage of Boston does not disclose a “summary”, “important scenes”, or “audio/video content up to a particular point.” Rather, paragraph 0021 of Boston discusses “selecting a remote PVR.” Applicant respectfully asserts that neither paragraph 0021 of Boston, nor any other portion, discloses “*executing a set of instructions that use the programmatic data to present, to the user, a summary of important scenes of the audio/video content up to a particular point in the audio/video content,*” as recited in Applicant's claim 69. Presenting a

summary of important scenes to a user is discussed in Applicant's specification at least on page 28, line 16–page 29, line 15.

As each and every element of claim 69 has not been shown in a single reference, a *prima facie* case of anticipation has not been established. Accordingly, Applicant respectfully requests withdrawal of the §102 rejection.

### Claim 73

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 73 to include all elements of dependent claim 76. The amendments to claim 73 are limited to incorporating the recitation of dependent claim 76. Consequently, claim 73 presented herein has already been examined by the Office.

**Independent claim 73** recites a method comprising:

- obtaining audio/video content to be presented to a user;
- obtaining programmatic data associated with the audio/video content; and
- executing a set of instructions that use the programmatic data to allow the user to access additional episodic content associated with the audio/video content; and

***charging a fee for access to the additional episodic content.***

Applicant respectfully submits that no such method is disclosed by Boston.

The grounds of rejection for Applicant's claims 73 and 76 cite to paragraphs 0021 and 0097 of Boston. Paragraph 0021 is discussed above with respect to independent claim 69.

### Boston, paragraph 0097 (emphasis added):

‘ISP’ means ‘Internet Service Provider,’ a company that provides access to the Internet. For a **monthly fee**, an ISP provides a user identification code (often called a ‘username’), a password, and an access phone number or, for wide band services, an internet protocol address, through which to access the Internet.

Equipped with proper couplings for data communications, such as a modem or cable modem, users and companies can then log on to the Internet, browse the World Wide Web, and access other Internet related services such as USENET and e-mail. In servings companies, ISPs also provide a direct connection from the company's networks to the Internet.

While the passage cited by the Office contain the word “fee,” use of this passage as a grounds of rejection suggests that the Office is equating Internet access with additional episodic content. This is similar to equating a highway toll with paying for gasoline. Applicant has searched and failed to find, either in the cited paragraphs or elsewhere in Boston of “*charging a fee for access to the additional episodic content*,” as recited in Applicant's amended claim 73.

Accordingly, as a *prima facie* case of anticipation has not been established for independent claim 73, now including the elements of dependent claim 76, Applicant respectfully requests withdrawal of the §102 rejection.

#### Claim 78

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant amends independent claim 78 to clarify further features of the subject matter.

**Independent claim 78** recites a system comprising:

- a processor;
- a memory coupled to the processor and configured to store a plurality of modules;
- an audio/video playback module configured to receive audio/video content for playback; and
- a programmatic data control module configured to:
  - receive programmatic data associated with the audio/video content;
  - monitor a stream of the audio/video content for temporal location identifiers to map the programmatic data to the audio/video content;* and

*enhance the playback of the audio/video content, wherein the enhancement is based at least in part on the programmatic data, wherein the programmatic data and the audio/video content are part of a same data stream received from a same source.*

Applicant respectfully submits that no such system is disclosed by Boston.

The grounds of rejection for claim 78 are the same as for claim 7 (Office Action, page 11). The grounds of rejection for claim 7 are discussed above with respect to claim 7.

Applicant has searched and failed to find, either in the cited paragraphs or elsewhere in Boston of either “*monitor[ing] a stream of the audio/video content for **temporal location identifiers to map the programmatic data to the audio/video content***” or “*enhance[ing] the playback of the audio/video content, wherein the enhancement is based at least in part on the programmatic data, wherein **the programmatic data and the audio/video content are part of a same data stream received from a same source***,” as recited in Applicant’s amended claim 78.

Accordingly, each and every feature of amended claim 78 is not disclosed, and therefore Boston does not anticipate Applicant’s amended claim 78. Applicant respectfully requests withdrawal of the §102 rejection.

Claims 2–6, 8–18, 20–31, 33–35, 36–44, 46, 48, 50, 52–56, 58–61, 63–68, 70–72, 74–77, and 79–80

Applicant cancels **dependent claims 55, 63, and 76** without prejudice, waiver, or disclaimer of the subject matter, and thus, the rejections are now moot.

**Dependent claims 2–6, 8–18, 20–31, 33–35, 36–44, 46, 48, 50, 52–54 and 56, 58–61, 64–68, 70–72, 74–75 and 77**, depend directly or indirectly from one of independent claims 1, 7, 19, 32, 36, 45, 47, 49, 51, 57, 62, 69, 73, and 78, respectively, and thus, are allowable as

depending from an allowable base claim. These claims are also allowable for their own recited features that, in combination with those recited in claims 1, 7, 19, 32, 36, 45, 47, 49, 51, 57, 62, 69, 73, and 78 are not disclosed by Boston. Applicant respectfully requests consideration of each dependent claim.

Applicant respectfully requests withdrawal of the §102 rejections.

**Expectation that the Next Action will not be Final**

Applicant submits that all pending claims are in condition for allowance. If the Office feels otherwise and believes that another action on the merits is necessary, then Applicant expects such an action would be Non-final.

According to 37 CFR § 1.113 and MPEP 706.07, the “examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.... The invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied.”

In accordance with 37 CFR § 1.113 and MPEP 706.07(a), Applicant respectfully submits that finality would be premature for the next action for the following reasons:

- The Applicant took no action herein with regard to certain independent claims that necessitates that the Examiner perform a new search or introduce a new ground of rejection; and
- This Office Action failed to provide specific claim rejections and/or reasoning for rejections of certain independent claims.

No Action necessitating new grounds for rejection or new search

Herein, Applicant does not and has not amended independent claim 69. Furthermore, the amendments to claims 51, 62, and 73 are limited to incorporating the recitation of dependent claims 55, 63, and 76, respectively. Consequently, one or more claims presented herein have already been examined in the Office Action. Furthermore, Applicant explains herein why these already-examined claims differ from the cited reference of record. Therefore, in accordance with 37 CFR § 1.113 and MPEP 706.07(a), finality for the next action would be premature.

Rejecting claims without specific support or reasoning

While the Office Action provides a rejection that includes independent claims 32 and 36, the Office Action fails to address claims 32 or 36 directly. In other words, the Office Action rejects independent claims 32 and 36 for the same reasons as independent claims 7 and 1, respectively, but provides no specific support or reasoning as to why the cited reference of record allegedly discloses all of the unique elements of claims 32 and 36.

Applicant's Right to Adequately Respond

With few exceptions, the Examiner provides little to no **explanation** as to how the components of the cited reference correspond to the actual claim language. Applicant respectfully submits that the Office has not articulated the reasons for its decision-making here, thus denying Applicant an opportunity to adequately respond.

Furthermore, according to the reasons and facts given above and to 37 CFR § 1.113 and MPEP 706.07, Applicant respectfully submits that no clear issues have been developed between the Applicant and the Examiner for each pending claim so that such issues would be ready for

appeal if the next action is made final. Accordingly, Applicant respectfully requests that the next action—if not a Notice of Allowance—be Non-final.

### **Conclusion**

For at least the foregoing reasons, claims 1–54, 56–62, 64–75, and 77–80 are in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejections and an early notice of allowance.

If any issue remains unresolved that would prevent allowance of this case, Applicant requests that the Examiner contact the undersigned attorney to resolve the issue.

Respectfully Submitted,  
Lee & Hayes, PLLC

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By: /Benjamin Keim/

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